

## Message Text

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ACTION L-03

INFO OCT-01 ARA-10 ISO-00 SCA-01 JUSE-00 CIAE-00 INR-07  
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FM AMEMBASSY SAN JOSE  
TO SECSTATE WASHDC 6486

UNCLAS SAN JOSE 0702

E.O. 11652: N/A  
TAGS: PFOR, PGOV, CS  
SUBJECT: COSTA RICAN JUDGE RULES THAT NO EXTRADITION LAW  
EXISTS -- SPANISH APPEAL

JPREF: (A) SAN JOSE 0643; (B) SAN JOSE 0620

1. SUMMARY: SPANISH EMBASSY FEBRUARY 17 APPEALED PENAL COURT  
JUDGE'S DECISION TO DISMISS ITS PETITION SEEKING EXTRADITION OF  
A SPANISH FUGITIVE ON THE GROUNDS THAT NO VALID EXTRADITION LAW  
EXISTS. APEAL MAKES TWO BASIC ARGUMENTS: 1976 EXTRADITION LAW  
IS IN FORCE AND RULING WAS PROCEDURALLY INCORRECT UNDER COSTA  
RICAN LAW. LEGAL OPINION IS DIVIDED AND OUTCOME REMAINS UNCLEAR.  
END SUMMARY.

2. THE SPANISH EMBASSY HAS APPEALED THE DECISION RENDERED BY  
A PENAL COURT JUDGE THAT A SPANISH FUGITIVE COULD NOT BE  
EXTRADITED AS NO COSTA RICAN EXTRADITION LAW IS IN FORCE THAT  
COULD IMPLEMENT THE EXTRADITION TREATY BETWEEN THE TWO NATIONS.  
THE SPANISH APPEAL ARGUES THAT THE 1971 EXTRADITION LAW S  
AMENDED BY THE 1974 AND 1976 EXTRADITION LAWS REMAINS IN FORCE  
AND WAS NOT REPEALED BY THE PASSAGE OF THE PRESENT PE  
KL CODE.

3. TO SUPPORT THIS CONTENTION, THE FOLLOWING LEGAL REASONING  
WAS OFFERED:  
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-- THE 1971 EXTRADITION LAW WAS PROMULGATED ACCORDING TO  
CONSTITUTIONAL SPECIFICATIONS. ITS EXPRESSED PURPOSE WAS TO  
REGULATE EXTRADITION MATTERS. AS A CONSEQUENCE OF ITS ENACTMENT,  
REFERENCES TO EXTRADITION IN THE PENAL CODE OF 1971 WERE SUPER-  
CEDED AND THEREBY NULLIFIED. THE 1971 EXTRADITION LAW WAS NEITHER  
AN ADDITION NOR REFORM OF THE 1941 PENAL CODE AND WAS NOT

THEREFORE REPEALED BY PASSAGE OF A NEW PENAL CODE WHICH DID NOT REFER TO IT.

4. BESIDES ARGUING THAT THE EXTRADITION LAW IS IN FORCE, THE SPANISH APPEAL ALSO CLAIMS THE JUDGE'S RULING WAS PROCEDURALLY INCORRECT UNDER COSTA RICAN LAW. IT CITES THE BASIC JUDICIAL LAW OF COSTA RICA TO THE EFFECT THAT THE COURTS CANNOT EXCUSE THEMSELVES FROM RESOLVING A DISPUTE SUBMITTED TO THEM FOR LACK OF AN APPLICABLE LAW. IN SUCH INSTANCES, THE CASE IS TO BE RESOLVED ACCORDING TO LEGAL PRINCIPLES.

5. LEGAL OPINION REMAINS MIXED REGARDING THE JUDGE'S DECISION, BUT MORE THINK HE IS IN ERROR THAN NOT. ACCORDING TO ASSEMBLY SOURCES, IF NEED BE THE ASSEMBLY WILL PASS LEGISLATION TO "CORRECT" THE JUDGE'S DECISION. APPEAL DECISION IN ABOUT ONE WEEK. KILDAY

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